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Attorneys for Proposed Intervenor
Federal Housing Finance Agency

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SKYLIGHTS LLC,
Plaintiff,
vs.

DAVID BYRON; JENNIFER BYRON; CCSF
LLC; FEDERAL NATIONAL MORTGAGE
ASSOCIATION; CITIMORTGAGE, INC.;
CLEAR RECON CORP.; DOES I through 10;
and ROE BUSINESS ENTITIES I through 10,

Defendants.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Counterclaimant,

vs.

SKYLIGHTS LLC; THE FALLS AT
RHODES RANCH CONDOMINIUM
OWNERS ASSOCIATION, INC.,

Counter-defendants.

CASE NO. 2:15-cv-00043-GMN-VCF

**STIPULATION TO ENTRY OF ORDER
AND [PROPOSED] ORDER
PERMITTING FEDERAL HOUSING
FINANCE AGENCY TO INTERVENE AS
CONSERVATOR OF THE FEDERAL
NATIONAL MORTGAGE ASSOCIATION**

1 1. The Federal Housing Finance Agency (“FHFA” or “Conservator”), as Conservator
2 for Defendant Federal National Mortgage Association (“Fannie Mae”), seeks to intervene in the
3 above-captioned action pursuant to 12 U.S.C. § 4617(b)(2)(A)(i) and Fed. R. Civ. P. 24.

4 2. On September 6, 2008, FHFA’s Director appointed the FHFA Conservator of Fannie
5 Mae and the Federal Home Loan Mortgage Association in accordance with the Housing and
6 Economic Recovery Act of 2008, Pub. L. 110-289, 122 Stat. 2654 (codified at 12 U.S.C. § 4617)
7 (“HERA”).
8

9 3. The FHFA, as Conservator, has succeeded to “all rights, titles, powers, and
10 privileges” of Fannie Mae, including its right to sue and be sued in the federal courts. 12 U.S.C. §
11 4617(b)(2)(A)(i).

12 4. Accordingly, FHFA has an unconditional federal statutory right to intervene in this
13 matter, see Fed. R. Civ. P. 24(a)(1), and to assert its interests in a manner consistent with the
14 Conservator’s powers and duties.
15

16 5. Pursuant to Fed. R. Civ. P. 24(c), FHFA attaches as Exhibit A its intended Answer.

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STIPULATION

FHFA and Plaintiff Skylights LLC, through their attorneys of record, hereby stipulate and request that the Court make this stipulation an order of the Court:

The FHFA shall be permitted to intervene in the above-referenced action pursuant to 12 U.S.C. § 4617(b)(2)(A)(i) and Fed. R. Civ. P. 24.

DATED this 22nd day of January, 2015.

FENNEMORE CRAIG, P.C.

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Attorneys for Defendants/Counterclaimants
David Byron; Jennifer Byron; CCSF LLC;
Federal National Mortgage Association;
CitiMortgage, Inc.; Clear Recon Corp.; Does
1-10; and Roe Business Entities 1-10

LAW OFFICE OF MIKE BEEDE

By: /s/ with the consent of Michael N. Beede
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Attorney for Plaintiff Skylights LLC

**ORDER PERMITTING FEDERAL HOUSING
FINANCE AGENCY TO INTERVENE**

Having considered the Stipulation to Entry of Order Permitting Federal Housing Finance Agency to Intervene as Conservator of the Federal National Mortgage Association, it is hereby:

ORDERED that the Federal Housing Finance Agency is allowed to intervene in this action pursuant to 12 U.S.C. § 4617(b)(2)(A)(i) and Fed. R. Civ. P. 24; and it is further ORDERED that

1 this Order shall be effective immediately.

2 January 23, 2015

3 DATED: _____



4 HON. CAM FERENBACH
5 UNITED STATES MAGISTRATE JUDGE

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7 The Federal Housing Finance Agency must file its answer on or before January 30, 2015.
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Exhibit A

Exhibit A

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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 SKYLIGHTS LLC,
15 Plaintiff,
vs.

CASE NO. 2:15-cv-00043-GMN-VCF

16 DAVID BYRON; JENNIFER BYRON; CCSF
17 LLC; FEDERAL NATIONAL MORTGAGE
ASSOCIATION; CITIMORTGAGE, INC.;
18 CLEAR RECON CORP.; DOES I through 10;
and ROE BUSINESS ENTITIES I through 10,

**ANSWER AND COUNTERCLAIMS BY
PROPOSED INTERVENOR THE
FEDERAL HOUSING FINANCE
AGENCY AS CONSERVATOR FOR THE
FEDERAL NATIONAL MORTGAGE
ASSOCIATION**

19 Defendants.

20 FEDERAL NATIONAL MORTGAGE
21 ASSOCIATION,
Counterclaimant,

22 vs.

23 SKYLIGHTS LLC; THE FALLS AT
24 RHODES RANCH CONDOMINIUM
OWNERS ASSOCIATION, INC.,

25 Counter-defendants.

1 Simultaneously with this Answer, the Federal Housing Finance Agency (“FHFA”), in its
2 capacity as Conservator for the Federal National Mortgage Association (“Fannie Mae”), is filing a
3 joint stipulation signed by the parties agreeing that FHFA has a federal statutory right to intervene
4 in this matter pursuant to Federal Rule of Civil Procedure 24(a)(1). In accordance with Rule 24(c)’s
5 requirement that a motion to intervene “be accompanied by a pleading that sets out the claim or
6 defense for which intervention is sought, FHFA submits this Answer to respond as follows to the
7 Complaint filed by Plaintiff Skylights LLC:
8

9 1. FHFA admits that Plaintiff claims an interest in the Subject Property, but otherwise
10 denies the allegations within Paragraph 1 of the Complaint.
11

12 2. FHFA admits that a Trustee’s Deed Upon Sale was recorded on September 26, 2014,
13 in the records of Clark County, Nevada, as Instrument No. 20140926-0001915. Fannie Mae further
14 admits that the Trustee’s Deed Upon Sale states that Alessi & Koenig, LLC (“AK”), as agent for
15 The Falls at Rhodes Ranch Condominium Owners Association, Inc. (“The Falls HOA”), “grant[s]
16 and convey[s], but without warranty expressed or implied to: Skylights LLC (Grantee) all its right,
17 title and interest in the property legally described at APACHE SPRINGS CONDO AMD UNIT
18 2096 BLDG 21...” FHFA otherwise denies the allegations within Paragraph 2 of the Complaint.
19

20 3. FHFA is without knowledge or information sufficient to form a belief as to the truth
21 of the allegation within Paragraph 3 of the Complaint.

22 4. FHFA is without knowledge or information sufficient to form a belief as to the truth
23 of the allegation within Paragraph 4 of the Complaint.

24 5. FHFA admits that this Court has jurisdiction over the issues raised in this action and
25 that venue properly lies in this Court.
26

27 6. FHFA denies the allegations within Paragraph 6 of the Complaint.
28

7. FHFA is without knowledge or information sufficient to form a belief as to the truth of the allegation concerning why Plaintiff named Clear Recon Corp. as a defendant in this action, but FHFA admits that it is so named.

9. FHFA admits that Fannie Mae has an interest in the Subject Property. FHFA is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations within Paragraph 9 of the Complaint.

FIRST CLAIM FOR RELIEF

12. Paragraph 12 of the Complaint consists of Plaintiff's claims that do not require a response. To the extent a response is required, denied.

SECOND CLAIM FOR RELIEF

15. Paragraph 15 of the Complaint consists of Plaintiff's claims that do not require a response. To the extent a response is required, denied.

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AFFIRMATIVE DEFENSES

FHFA's investigation of these claims is continuing. By this Answer, FHFA waives no affirmative defenses and reserves its right to amend the Answer to insert any subsequently discovered affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for which relief can be granted because, among other reasons, Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes an HOA sale from extinguishing Fannie Mae's interest in the Property and preempts any state law to the contrary.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of laches, estoppel, waiver, unjust enrichment, and/or unclean hands.

THIRD AFFIRMATIVE DEFENSE

The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts described in the Complaint were caused in whole or were contributed to in part by reason of the acts, omissions, negligence, and/or intentional misconduct of Plaintiff and counter-defendant The Falls HOA.

FOURTH AFFIRMATIVE DEFENSE

The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts described in the Complaint were caused in whole or were contributed to in part by reason of the acts, omissions, negligence, and/or intentional misconduct of one or more third parties over whom neither FHFA nor Fannie Mae had control.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has an adequate remedy at law and has, through its own acts and/or omissions, failed to mitigate its damages, the existence of which are denied.

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SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to plead any alleged acts or omissions of Fannie Mae sufficient to warrant the consideration of general, expectation, consequential, or compensatory damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to equitable relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to join one or more indispensable parties.

NINTH AFFIRMATIVE DEFENSE

Fannie Mae breached no duty with regard to Plaintiff.

TENTH AFFIRMATIVE DEFENSE

FHFA incorporates by reference those defenses enumerated in Rules 8 and 12 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation reveals the applicability of any such defenses, FHFA reserves the right to seek leave of court to amend this Answer to assert the same.

COUNTERCLAIMS

FIRST COUNTERCLAIM

(Declaratory Judgment versus Plaintiff and The Falls HOA)

1. FHFA incorporates by reference the responses of all previous paragraphs, as if fully set forth herein.
2. Pursuant to 28 U.S.C. § 2201 and NRS § 40.010, this Court has the power and authority to declare FHFA and Fannie Mae's rights and interests in the Property.
3. Fannie Mae's Deed of Trust is a first secured interest on the Property.
4. The Federal Housing Finance Agency ("FHFA" or the "Conservator") is an agency of the federal government of the United States of America and is also the Conservator for Fannie Mae.

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5. The Conservator has succeeded by law to all of Fannie Mae’s “rights, titles, powers, and privileges.” 12 U.S.C. § 4617(b)(2)(A)(i).

6. During the Conservatorship, “[n]o property of [FHFA] shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the [FHFA], nor shall any involuntary lien attach to the property of [FHFA].” 12 U.S.C. § 4617(j)(3).

7. Fannie Mae’s secured interest at issue is property of the Conservator. Therefore, applying NRS Chapter 116 or other state law in a manner that extinguishes Fannie Mae’s first-position Deed of Trust would violate 12 U.S.C. § 4617(j)(3).

8. 12 U.S.C. § 4617(j)(3) preempts any state law that would permit a foreclosure on a superpriority lien to extinguish a first secured interest of Fannie Mae while it is under FHFA’s conservatorship.

9. Pursuant to 12 U.S.C. § 4617(j)(3), The Falls HOA Sale could not extinguish Fannie Mae’s first secured interest.

10. FHFA and Fannie Mae are entitled to a declaration from this Court, pursuant to 28 U.S.C. § 2201 and NRS § 40.010, that Fannie Mae is the beneficiary of a first position Deed of Trust which still encumbers the Property after the HOA Sale.

11. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201 and NRS § 40.010, that 12 U.S.C. § 4617(j)(3) precludes The Falls HOA Sale from extinguishing Fannie Mae’s first secured interest.

SECOND COUNTERCLAIM

(Quiet Title versus Plaintiff)

1. FHFA incorporates by reference the responses of all previous paragraphs, as if fully set forth herein.

2. Pursuant to 28 U.S.C. § 2201 and NRS § 40.010, this Court has the power and authority to resolve the Plaintiff’s adverse claims in the Property.

3. Fannie Mae’s Deed of Trust is a first secured interest on the Property.

4. Plaintiff claims an interest in the Property through a foreclosure deed that is adverse to Fannie Mae’s interest.

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5. Fannie Mae's interest in the Deed of Trust encumbering the Property constitutes an interest in real property.

6. Fannie Mae's secured interest at issue is property of the Conservator. Therefore, applying NRS Chapter 116 or other state law in a manner that extinguishes Fannie Mae's first-position Deed of Trust would violate 12 U.S.C. § 4617(j)(3).

7. Based on the adverse claims being asserted by the parties, FHFA and Fannie Mae are entitled to a judicial determination regarding the rights and interests of the respective parties to the case.

8. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201 and NRS § 40.010, that Fannie Mae is the beneficiary of a first position Deed of Trust which encumbers the Property after the HOA Sale.

9. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201 and NRS § 40.010, that Fannie Mae's secured interest by virtue of its Deed of Trust is superior to the interest, if any, acquired by Plaintiff through the foreclosure deed.

PRAYER FOR RELIEF

WHEREFORE, FHFA prays for the following relief:

1. That Plaintiff's request for injunctive relief be denied;
2. That Plaintiff takes nothing by way of its Complaint;
3. That the Court declare that 12 U.S.C. § 4617(j)(3) preempts any Nevada law that would permit a foreclosure on a superpriority lien to extinguish a first secured interest of Fannie Mae while it is under FHFA's conservatorship;
4. That the Court declare that The Falls HOA Sale HOA Sale did not extinguish Fannie Mae's first secured interest and thus did not convey the Property free and clear to Plaintiff;
5. That the Court declare that Fannie Mae's interest is secured against the Property and that Fannie Mae's interest is superior to the interest of Plaintiff;
6. That FHFA be awarded reasonable attorneys' fees and costs; and

///

///

7. That FHFA receive such other relief as the Court deems just and proper.

DATED this _____ day of January, 2015.

FENNEMORE CRAIG, P.C.

By: /s/ Leslie Bryan Hart

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